DATED date﻿

﻿your business name (Licensor) (1)

and

﻿your trademark recipient’s name (Licensee) (2)

**Trademark(s) licence**

**This licence agreement** is dated date﻿

It is executed between us,

1. ﻿your business name (a company incorporated and registered in the Republic of Ireland with company number [insert company number] whose registered office is at [insert address] (called ‘the Licensor’ in this agreement).
2. ﻿customer’s business name (a company incorporated and registered in the Republic of Ireland with company number [insert company number] whose registered office is at [insert address] (called ‘the Licensee’ in this agreement).

Within this agreement, we agree that:

**As** the Licensor, we own the Trademark(s) (defined below).

We have agreed to license the Trademark(s) to you, the Licensee, on the terms set out in this licence agreement.

**Agreed terms**

The terms agreed here (including the attached Additional Terms and Conditions at Annex 1 and all other attached annexes), set out the basis on which these agreed terms will operate.

1. **Definitions and interpretations**

1.1 If any word, phrase or explanation used within this agreement is not clear, it will be defined and interpreted according to the definitions and interpretations set out in these Additional Terms and Conditions at Annex 1.

**2. Licence**

2.1 The Licensor grants to the Licensee ﻿[an exclusive **OR** a non-exclusive﻿] licence to use the Mark in the Territory on and in relation to the Licensed ﻿[Products **OR** Services]﻿.

2.2 The Licensed ﻿[Products **OR** Services﻿] are the products/services described in Annex 3.

2.3 The Territory is [insert].

2.4 The Licensee shall have no right to sub-license the Mark.

**3. Quality Assurance**

3.1 The Licensee shall ensure that all Licensed ﻿Products **OR** Services﻿:

1. comply with such specifications and standards as are notified to it by the Licensor;
2. are ﻿﻿[manufactured **OR** ﻿provided﻿ and delivered] in accordance with best industry practice; and
3. comply with all relevant legislation.

3.2 The Licensee will upon the reasonable request of the Licensor:

1. ﻿﻿[provide samples of the Licensed Products for inspection by the Licensor] **OR** provide materials or other relevant demonstrations of the Licensed Services for review and inspection by the Licensor]﻿; and
2. [Allow the Licensor and its representatives access to its premises (and those of any relevant sub-contractor) during normal business hours to inspect its manufacturing and other processes for the Licensed Products **OR** administration and delivery process for the Licensed service.

3.3 If in the reasonable opinion of the Licensor the Licensed [﻿Products **OR** Services]﻿ do not comply with clause 3.1 above, the Licensor may give written notice to the Licensee requiring it to suspend sales of Licensed [﻿Products **OR** Services]﻿ until such non-compliance has been rectified.

3.4 The Licensee will promptly notify the Licensor in writing if it becomes aware of any defect in or material complaint about the Licensed ﻿[Products **OR** ﻿Services]﻿.

**4. Use of the Mark**

4.1 The Licensee shall mark all ﻿[Licensed Products **OR** materials relating to the Licensed Services]﻿ bearing the Mark as follows:

“﻿[Made **OR** Provided]﻿ by [licensee] in [location] under licence from [licensor]. [mark] is the [registered] trademark of [licensor].”

4.2 All marketing materials [and packaging] bearing the Mark shall be subject to the Licensor’s prior written approval (such approval not to be unreasonably withheld).

4.3 Any goodwill arising from the Licensee’s use of the Mark shall be for the benefit of the Licensor and the Licensee shall at the Licensor’s request execute such documents as required to give effect to this.

4.4 The Licensee shall:

1. comply with any reasonable directions given by the Licensor as to the use of the Mark;
2. not do or omit to do anything that might damage the reputation of the Mark or adversely affect the validity or enforceability of the Mark or the Licensor’s rights in the Mark.

**5. Royalties**

**5.1** [The Licensee shall pay to the Licensor the sum of €xx within 5 Business Days of the date of this agreement]

5.2 The Licensee will pay to the Licensee a royalty equal to [xx]% of the Net Sales Value of all Licensed [﻿Products **OR** Services]﻿ that the Licensee sells in the Territory, [subject to a minimum royalty of €xx per ﻿Quarter **OR** ﻿Year]﻿﻿.

5.3 All sums payable are exclusive of VAT, which shall be payable in addition by the Licensee, where applicable.

5.4 For the purposes of establishing the amount of royalties due to the Licensor, within [10] Business Days after the end of each Quarter, the Licensee will send to the Licensor, a statement showing the aggregate Net Sales Value of each description of Licensed ﻿[Products **OR** Services]﻿ sold by the Licensee during that Quarter.

5.5 The Licensor will then issue an invoice to the Licensee [(in a form suitable for VAT purposes)], for the royalties due to the Licensor in respect of each Quarter, [(including any minimum royalty payable under clause 5.2)], as soon as practicable after receipt by the Licensor of the statement of aggregate Net Sales Value sent by the Licensee under clause 5.4 and the Licensee shall pay such invoice within [10] Business Days.

5.6 The Licensee shall keep a full and accurate record of all sales of Licensed ﻿[Products **OR** Services]﻿ in the Territory. The Licensee will permit the duly appointed representatives of the Licensor, at all reasonable times, to inspect all such accounts and records and to take copies thereof.

5.7 [The Licensee shall within 30 Business Days of the end of each year send to the Licensor a certificate from its accountants **OR** auditors confirming the aggregate Net sales Price for Licensed Products **OR** Services sold by the Licensee in the Territory for that year].

**6. Renewals and records**

6.1 The Licensor will pay any renewal or other fees necessary to maintain any registration of the Mark and any application for the Mark and shall prosecute any such application diligently during the term of this agreement.

6.2 [The Licensee shall, at its own cost and as soon as reasonably practicable, record the licence granted to it in clause 2 in the relevant registries in the Territory, and comply with any reasonable instructions of the Licensor relating to recording requirements and its cancellation, when this agreement expires or terminates].

6.3 [The Licensor shall provide reasonable assistance, at the Licensee’s cost, to enable the Licensee to comply with clause 6.2].

**7. Infringement**

7.1 The Licensor warrants that it is not aware that the use of the Mark on the Licensed ﻿[Products **OR** Services]﻿ in the Territory will infringe any third-party rights.

7.2 The Licensee will promptly notify the Licensor if it becomes aware of any actual or suspected infringement of the Mark or any claim against or opposition to the Mark.

7.3 The Licensor shall have absolute discretion as to what action to take and the provisions of section 34 of the Trade Marks Act 1996 shall not apply.

7.4 If any third-party infringement of the Mark has a material adverse effect on the Licensee’s sale of the Licensed ﻿[Products **OR** Services]﻿ in the Territory, it may commence proceedings. Subject to the Licensee giving to the Licensor an indemnity against all costs and damages it may incur, the Licensor shall lend its name to such proceedings and provide the Licensee with reasonable assistance.

**8. Term**

This agreement shall commence on the Commencement Date and, subject to clause 4 (Termination), shall continue for a period of xx years.

**OR**

This agreement shall commence on the Commencement Date and, subject to clause 4 (Termination), shall be for an initial term of xx years. It will be automatically extended for further periods of xx years, unless terminated, by not less than xx months’ written notice, such notice to expire at the end of the initial term or any subsequent period for which the agreement is extended.

**OR**

This agreement shall commence on the Commencement Date and, subject to clause 4 (Termination), shall continue until terminated by either party by not less than xx months’ written notice.

**This agreement has been entered into on the date stated at the beginning of it.**

﻿

Author Signature

Date signed:

Signed by [name] for and on behalf of the Licensor

﻿your company name﻿

﻿

Recipient Signature

Date signed:

Signed by [name] for and on behalf of the Licensee

﻿licensee name﻿

**﻿**

**Annex 1 - Additional Terms and Conditions**

* 1. **Interpretation and definitions**

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Business Day:** a day, other than a Saturday, Sunday or public holiday in the Republic of Ireland, when banks in Dublin are open for business.

**Commencement Date:** ﻿﻿[date﻿ **OR** the date of this agreement] .

**Marks:** the trademark(s), details of which are set out in Annex 2

**Net Sales Value:** the price of the Licensed ﻿[Products **OR** Services]﻿ invoiced to the Licensee’s customer, but excluding VAT or other sales taxes, carriage, insurance and any discounts or rebates.

**Quarter:** each period of three calendar months starting on [1 January, 1 April, 1 July and 1 October].

**Year:** a period of 12 months, with the first Year commencing on the Commencement Date.

1.2 Clause and Annex headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Annexes form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Annexes.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

1.8 A reference to **writing** or **written** includes email

1.9 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

**2. Interest**

If either party fails to make a payment under this agreement when due, then (without prejudice to any other right under this agreement) the defaulting party shall pay interest on the overdue sum. Interest will accrue at the Central Bank base rate for the time being plus 4% from the due date to the date of payment.

**3. Indemnity and insurance**

3.1 The Licensee shall indemnify the Licensor against any liability, loss, damages, costs and expenses of any nature, whatsoever incurred or suffered by the Licensor, arising out of any dispute, claim or proceedings brought against the Licensor by a third party in respect of the ﻿[manufacture, use or sale of any Licensed Products **OR** supply, delivery or sale of any Licensed Services﻿] by the Licensee, or the use by the Licensee of the Mark, except insofar as any such claims arise from:

1. any breach of this agreement by the Licensor; or
2. any invalidity or defect in the title of the Licensor to the Mark not caused by any act or default of the Licensee.

3.2 [The Licensee shall, at its expense, carry product liability and comprehensive general liability insurance cover of €[amount]. The Licensee shall ensure that such insurance policy names the Licensor as co‑insured with the Licensee and remains in effect throughout the duration of this agreement and for a period of number years after termination or expiry of the agreement and shall supply the Licensor with a copy of such policy on request].

**4. Termination**

4.1 Either party may terminate this agreement immediately by giving notice to the other party if the other party:

1. commits a material breach of this agreement and, if the breach is capable of being remedied, fails to remedy it within [30] days after receipt of a written notice specifying the breach and requiring it to be remedied;
2. fails to pay any sum payable by it under this agreement within [14] days of the due date for payment;
3. is unable to pay its debts or otherwise becomes insolvent or suspends making payments to all or any class of its creditors or announces an intention to do so;
4. suffers any distress, diligence, execution, attachment or other legal process that affects the whole or a material part of its assets, and it is not discharged within [14] Business Days;
5. a receiver or similar officer is appointed over the whole or any part of its assets, or it requests any person to appoint such a receiver or similar officer, or any other steps are taken to enforce any security over any of its property;
6. any order is made, or resolution is passed, or a petition is presented, or application is made, or notice filed, or other steps are taken in any jurisdiction for:
	1. the winding up, dissolution or liquidation of it (other than a winding‑up petition that is vexatious or frivolous and is discharged within 10 Business Days of issue); or
	2. the making of an administration order against it or there is given to any person a notice (whether formal or informal) of an intention to appoint an administrator or any such appointment is made in relation to it;
7. any proposal is made for a voluntary arrangement or composition with its creditors;
8. [commits or engages in any event analogous to any of the above which takes place under another jurisdiction];
9. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
10. (being an individual) is the subject of a bankruptcy petition, application or order or dies or due to incapacity becomes unable to perform his obligations under this agreement.

4.2 The Licensor may terminate this agreement immediately by giving notice to the Licensee, if the Licensee challenges the validity of the Mark.

**5. Consequences of termination**

5.1 Upon termination of this agreement for any reason, the Licensee shall immediately cease to make any use of the Mark, except as set out in clause [5.2] below.

5.2 The Licensee shall for a period of [90] days after the date of termination, have the right to ﻿[dispose of all stocks of Licensed Products in its possession **OR** provide the Licensed Services for which it has existing orders]﻿, subject to the payment of royalties pursuant to clause 5 of the main agreement.

5.3 Within [120] days after the date of termination, the Licensee shall promptly destroy, or if the Licensor shall so elect, deliver to the Licensor, at the Licensee’s expense, all [Licensed Products and] materials bearing the Mark that it has not disposed of within [90] days after the date of termination.

5.4 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

**6. Limitation of liability**

6.1 Subject to clause [6.2], the Licensor shall not be liable to the Licensee (whether in contract, tort, breach of statutory duty or otherwise) for:

1. any loss of profit;
2. any loss of revenue, anticipated savings or goodwill; or
3. any indirect or consequential loss.

6.2 Nothing in this agreement shall operate to exclude or limit the liability of the Licensor for death or injury caused by its negligence or for fraud.

**7. Confidentiality**

7.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause [7.2].

7.2 Each party may disclose the other party's confidential information:

1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or connected with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause [7]; and
2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

7.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or connected with this agreement.

**8. Notices**

8.1 Any notice given to a party under or connected with this agreement shall be in writing and shall be:

1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
2. sent by email to the address in set out below (or such other address as notified in writing by that party to the other):
	1. ﻿email address for licensor.
	2. ﻿email addresses for licensee﻿

8.2 Any notice shall be deemed to have been received:

1. if delivered by hand at the time the notice is left at the proper address;
2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;
3. [if sent by email, at 9.00am on the next Business Day after transmission.]

8.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

8.4 [A notice given under this agreement is not valid if sent by email]

**9. Assignment and Sub-Contracting**

9.1 Neither party shall, without the prior written consent of the other:

1. assign, charge or deal in any other manner with; or
2. sub-contract any or all of its rights or obligation under this agreement.

**10. Entire agreement**

10.1 This agreement contains the entire agreement between the parties and supersedes all previous agreements and understandings between them, whether written or oral, relating to its subject matter.

10.2 Each party agrees that it shall have no remedies in respect of any statement, representation or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**11. Severance**

If any part of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant part shall be deemed deleted. Any modification to or deletion of such part under this clause shall not affect the validity and enforceability of the rest of this agreement.

**12. Waiver**

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

1. Waive that or any other right or remedy.
2. Prevent or restrict the further exercise of that or any other right or remedy.

**13. Variation**

No variation of this agreement shall be effective unless it is in writing and signed by the parties.

**14. Third-party rights**

This agreement does not give rise to any rights to third parties to enforce any of its terms.

**15. Announcements**

Except as required by law, neither party shall make or permit any public announcement relating to this agreement or its terms without the prior written consent of the other party (which will not be unreasonably withheld or delayed).

**16. Law and jurisdiction**

16.1 This agreement and any dispute or claim arising out of or connected with it shall be governed by and construed in accordance with Irish law.

16.2 Subject to clause 16.3, the parties submit to the exclusive jurisdiction of the Irish courts in relation to any dispute or claim arising out of or connected with this agreement.

16.3 The Licensor shall be free to seek interim or injunctive relief in any relevant jurisdiction to protect its interest in the Mark.

**Annex 2 - The Mark(s)**

﻿describe﻿

**Annex 3 - Licensed ﻿Products OR Services﻿﻿**

﻿describe

**Guidance Notes**

**Trademark licence**

**General notes**

This template is designed for trademark licences relating to the supply of products or services in Ireland.

Use this template to licence your trademark(s) to someone else in a way that enables you to control the way they use them and without any risk to your rights of ownership.

For more background and guidance on trademarks, how to register them so that they can be licensed and how to enforce them if they come under threat, see our many guides in our **Intellectual property hub**.

If you’re looking to sell your trademark rights, you’ll need our **trademark assignment agreement template** instead.

**Paragraph Specific Notes**

**2.3** **Location details and boundaries**

Here you should insert a clear description of the location, including boundaries, where the Licensee can use the trademarks.

It’s important to delineate the boundaries, since you may be licensing to others in other places, or want to continue to use the trademarks yourself, outside the location where you’re permitting the Licensee to use them.

Being clear about the geographic parameters of the licence can save arguments (and the costs of them) later.

#### **2.4 Sub-licensing**

If you want the Licensee to be able to sub-licence, we recommend that you revise this clause to clarify that the Licensee cannot do so without seeking and obtaining your prior express approval in writing and giving yourself the right to refuse to approve the request.

You’ll then need to put in place some wording that requires the Licensee to only sub-licence on terms identical or equivalent to the terms of this licence.

#### **4.3 What is Goodwill?**

Goodwill, along with items called ‘custom’ and ‘connection’, is one of the hardest-to-value assets of a business. And yet, it can be one of the most valuable – especially when it comes to selling that business or valuing it for investment purposes.

Goodwill basically includes the intangible items that add to a company’s value, but which cannot be easily identified or valued. These intangible items could include trademarks, and the reputation of the company.

They may also take into account factors such as brand identity, customer relations, customer loyalty, and staff satisfaction.

However, goodwill won’t cover identifiable assets such as contracts or legal rights, or assets that can be separated, divided, transferred, or sold.

These intangible assets are notoriously difficult to value, and in many cases, their ultimate value will come down to how keen a potential buyer is to acquire the business in question or an investor to invest in it – and the competition they may face.

You’re unlikely to need to calculate the value of goodwill often, typically, it only arises in situations where the value of your business is being assessed. But perhaps frustratingly, it isn’t something that typically gets listed out in your annual accounts or book-keeping practices each year – so it generally has to be calculated from scratch, when the need arises.

And you’ll need expert tax and accountancy advice to get it right for your particular circumstances – not least because different parties will potentially want a different result from the calculation.

For example, a seller will want to drive the price up (pointing to a higher goodwill figure), and potential buyers might well want the opposite.

There are a number of ways to approach valuing goodwill. One of the most popular methods is to measure it by reference to how much extra a business is able to charge for what it does – in other words, the profit it can achieve above the usual return you’d expect from the business.

This is sometimes called the ability to make a ‘super profit’.

This relies on there being some kind of industry benchmark or measurable comparator, which isn’t available for the more unique and disruptive business models – but it’s generally broadly calculable (with a bit of expert help from an accountant!), for most of the rest of us.

Just remember that while the valuation needs to be credible and expertly validated, in the end, a business is only worth what an investor or buyer is

#### **5.** **Royalties**

‘Royalties’ is the name for the fees that the Licensee pays to you in return for your permission to use your trademark(s).

#### **5.1** **Optional: Royalties as a one-off or continuous payment**

This wording is optional since the royalty could be just a one-off payment (in which case, you wouldn’t need Clause 5.2), or you might prefer both a one-off payment and a continuing payment obligation.

#### **5.2.** **Minimum royalty**

You can set a minimum royalty as a form of economic protection in case the Licensee is not that successful or doesn’t push the products or services under your trademarks as hard as you both envisaged at the point of negotiating and signing this licence agreement.

#### **5.7** **Optional: Sales reporting**

This is optional and favours you, as the Licensor.

You may want to include it if the licence is a substantial one and/or the Licensee’s activities are likely to be hard to keep track of, and/or it’s a new business relationship where you want the comfort of knowing that everything sale is properly accounted for.

If sales aren’t going to plan, or royalties aren’t coming through as anticipated, and there doesn’t seem a reasonable explanation for it, this maybe an efficient and accurate way to find out whether the Licensee is in breach of the licence terms (e.g. by not reporting all the sales to you to avoid paying so many royalties).

#### **6.2 Record of Licence at national registry**

It may be necessary, or advisable, for your licence to be recorded at a national registry in the Territory, especially if this is outside of Ireland.

This helps protect your Mark. Expert advice should be sought if you’re planning to licence the Mark for activities outside of Ireland.

#### **7.1** **Warranty**

A warranty is a contractual guarantee or promise that specific facts or conditions are true or will happen.

If the facts or conditions prove false within that time limit however, then the recipient of that warranty, in this case, the Licensee, can take action against the Licensor for any damage that the Licensee suffers as a result of relying on the warranty provided.

In this case, the drafting is carefully worded. The clause says that you, as the Licensor, are not aware of any use of your trademark that would lead to an infringement of someone else’s rights. You should be able to give that statement truthfully and comfortably – if this is true.

It does not say that you promise or guarantee that there will be no infringement action against the Licensee or you if the mark is used in the Licensee’s allocated location.

Even if you have registered your trademark in a territory, it is no guarantee that someone won’t subsequently look to challenge it.

#### **7.3** **Licence infringement**

Section 34 of the Trade Marks Act 1996 covers rights of licensees in cases of infringement, and it will apply in relation to infringements of a registered trademark unless it is expressly excluded in the licence.

The act essentially permits the Licensee to take matters into its own hands and amongst other things, oblige you, as the Licensor, to take action against an infringer – and if you decide not to do so, the Licensee can take the action instead, as if it were the trademark owner. It must also join you to the proceedings, either as a fellow claimant or a defendant.

There may be many reasons why you do not want to pursue a similar approach to one favoured by the Licensee where someone has infringed the trademark.

Excluding the application of Section 34 ensures that you can make your own strategic decisions, less encumbered by any pre-emptive actions by the Licensee….

But not totally unencumbered. The wording of Clause 7.4 still permits the Licensee to take action in prescribed circumstances and in a manner much more favourable to you.

#### **7.4 Material adverse**

What does material adverse effect mean? It’s interpreted generally to mean any occurrence that has a significant negative impact on the Licensee’s revenue.

#### **8. Length of licence relationship**

How long you want the licence relationship to last is up to you.

Most relationships take account of the fact that the licensee may need time to build sales before it’s possible to measure the success of the arrangement.

Annual renewals of the agreement could be made to fit in with your financial year/annual budgeting process.

It is often advisable to select a termination clause that includes a general right to give a reasonable period of notice. So, you may prefer the second or third versions suggested for this clause.

#### **Annex 1 – Additional terms**

#### **1.8 Email as a service**

Some businesses are nervous about including email as a permitted form of communication for contractual communications, even though it has become a very common and convenient method of communicating in business.

That nervousness comes from a legitimate concern that if an individual’s email address is given here, that individual may in fact be on holiday, or perhaps have left the company, at the point when the email is sent.

If it’s an email trying to service a legal notice on someone, then that notice may be served regardless of when it was picked up/opened/passed on.

If you don’t want to include email, you can simply delete this clause.

#### **3.2 Liability**

Our experts recommend that this is included in relation to the use of the trademarks on products.

If your licence agrees to the use of your Mark for services only, you can delete the reference to product liability on the first line of the clause, but you should also retain it.

The clause reassures you that the Licensee has adequate cover in case there is a third-party claim relating to the supply of the products or services under the Marks in the Licensee’s territory.

#### **12. Severance**

Severance clauses have been around for a long while and most people don’t pay them a lot of attention, largely because they are very rarely needed.

What they set out to do is rescue the substance of a contractual agreement if the law subsequently intervenes, by e.g. changing its position on what’s lawful or enforceable and rendering a provision within the contract suddenly not lawful.

It’s good practice to have one of these included in your agreement and most agreements keep them just in case. In these circumstances, they’re not something you should reasonably expect to be revisiting once the agreement is signed.

**13.**  **What is a waiver of a right or remedy under a contract and when might you want to exercise one?**

A ‘waiver’ is a well-recognised legal term that means a person or contract party voluntarily giving up or choosing not to enforce, a legal right that they otherwise have under the contract terms.

It’s worth including this clause as drafted, since waivers can be both deliberate and – crucially, unintentional or accidental.

If you expressly and deliberately choose not to exercise or enforce a legal right that you otherwise have, that’s fine. You don’t technically need to do so in writing, but it’s often a good idea so that there can be no misunderstanding about your intentions or your future intentions.

For example, you might be happy not to enforce a right on one occasion, but if the same thing happens again, you might very well want to do so.

Putting your intention in writing helps to prevent any misunderstandings or unwelcome assumptions on the part of any other party to your agreement.

Our drafting here also reinforces this by pointing out that just because you decided not to exercise a legal right in the contract on one occasion, that doesn’t mean you’ve lost the right to do so in future if the same trigger event happens again.

It also makes clear that if you don’t take immediate action to enforce your contractual right(s), that doesn’t mean you’ve implicitly agreed to surrender them.

Finally, and equally importantly, it covers the position where, if you didn’t have the requirement for a waiver to be in writing, you might otherwise accidentally surrender one or more of your contractual rights.

This is a significant protection. In some situations, it might otherwise be reasonable for your counterparty to assume that you have surrendered contractual rights (e.g. to be paid on time or in a particular way, or to allocate territorial protections, etc.) and/or for the law to support an argument by your counterparty that you have waived those rights.

Meaning that key terms of importance to you might become undermined or unenforceable.

So, this short little clause actually packs quite a powerful protective punch for both parties to an agreement.

#### **15. Implied legal right**

Sometimes, someone who is not part of your agreement could be given an implied legal right under it. You probably don’t want this to happen, but the law makes this possible in some circumstances.

The only way to avoid this is to include this simple exclusion clause in your agreement.

There is no magic to this clause. This is simply a matter of being really clear about what’s included in the agreement and what is not.

#### **17.3 Interim or injunctive relief**

Interim or injunctive relief is basically an action taken on an emergency basis to a court, requesting immediate intervention by the court, in this case, in relation to an infringement situation.

These can be costly, will ideally require the involvement of lawyers and are generally actions that are appropriate for serious infringements, typically by third parties, that, if not immediately stopped, will cause significant harm to the Licensor and, likely also, the Licensee.

**Annex 2 and 3– The Mark(s)**

**Describe the marks**

Describe the mark(s) as clearly as possible, including, where registered, the mark(s) registered numbers, the identity of the country registry with which each registration sits, indication of whether the trademark is a word mark, logo or other visual image and if the latter two, screen shots or visual representations of these.

If they are to be positioned in a certain way or other requirements attach to how you, as Licensor, want the Marks to be used, you should set this out in written guidelines and also attach them as a further annex, (which would need to be referred to in the main body of the agreement.

These guidelines should be added to the definitions too.

**End of notes**